

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM

March 14, 1996

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Budget Statements of the Chairman
and General Counsel

Attached for your information are the statements of the Chairman and General Counsel before the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the House Committee on Appropriations.

B. A. B.

Attachments

STATEMENT OF
WILLIAM B. GOULD IV
CHAIRMAN OF THE NATIONAL LABOR RELATIONS BOARD
BEFORE THE
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES,
EDUCATION, AND RELATED AGENCIES OF THE HOUSE COMMITTEE ON
APPROPRIATIONS

March 14, 1996

Mr. Chairman and distinguished Members of the Subcommittee:

I welcome this opportunity to appear before you once again as Chairman of the National Labor Relations Board (NLRB) to testify in support of the Agency's budget request for Fiscal Year 1997. At the outset I should introduce our General Counsel, Fred Feinstein. Also with us today is Harding Darden, our Budget Officer.

In accordance with normal procedure, the Agency will be submitting a detailed Fiscal Year 1997 Justification. In my testimony today I would like to briefly highlight the Justification statement as it concerns our recent activities as well as our plans for the future.

The Fiscal Year 1997 budget now before you requests an appropriation of \$181,134,000. This request is the product of an analysis of the NLRB's best current estimate of the number of cases that the Agency will receive in 1997; how these cases will be resolved; the number of staff-years of employment (FTE) needed based on targeted rates of productivity; and, finally the direct and support costs required to handle the anticipated caseload. We project a 2 percent increase in case intake for FY 1997 over that of FY 1996 to approximately 40,693 cases.

The General Counsel has statutory responsibility for the investigation and prosecution of cases. By virtue of the Board's delegation to him, 33 Regional Directors and their staffs process representation as well as unfair labor practice cases. He will be addressing these concerns separately. Directly under the responsibility of the Chairman and the Board are the Division of Administrative Law Judges and the staffs of the Board Members.

ADMINISTRATIVE LAW JUDGES

In Fiscal Year 1995, our Administrative Law Judges closed 521 hearings, issued 531 decisions, and obtained 634 settlements. The total number of settlements is an achievement in and of itself and reflects the emphasis we continue to place on settling cases whenever possible, not only because settlements save both the Agency and taxpayers a great deal in litigation costs, but because they ensure that the parties themselves avoid the delays and cost inherent in the formal trial process and subsequent consideration by the Board and/or the Courts of Appeals.

Based on experience gained from a 13-month experiment, the Board adopted, effective March 1, two rule modifications which promote still more settlements. The chief judge may now assign a settlement judge in cases which otherwise may not settle at trial. The settlement judge has the authority to mediate and not adjudicate. Discussions between the parties and the settlement judge are confidential and inadmissible in proceedings before the Board except by stipulation of the parties. During the experimental period the Division focused on assigning settlement judges in cases with long trial estimates where a settlement would result in the greatest savings to both the Agency and the parties. Of the 66 cases where a settlement judge was assigned, 41 cases settled, saving more than a year of hearing days plus more than \$100,000 in out-

of-pocket hearing expenses and travel costs, moreover, the early settlements assisted by the settlement judges, saved the government and the private parties much of the cost of trial preparation that otherwise would have been incurred.

Another rule modification is designed to help judges decide cases more quickly by giving Administrative Law Judges the authority to render bench decisions in certain cases within 72 hours after conclusion of oral argument. This can reduce the time it takes to process unfair labor practice charges by as much as 6 months. During the 13-month experimental period, 14 bench decisions were made. We believe that the number of bench decisions was low because long hearings typically do not lend themselves to bench decisions and because prehearing settlements were reached in a high percentage of the cases that would be suitable for bench decisions. We expect to see greater use of this procedure which will result in greatly expedited disposition of appropriate cases.

Both of these modifications took permanent effect on March 1.

NEW SPEED TEAM PROCEDURE

ADOPTED BY THE BOARD

In 1995, the Board decided 657 unfair labor practice cases and 278 contested representation cases. At the close of FY 1995, the Board had 280 unfair labor practice cases pending. With respect to overage cases, at the end of FY 1995, the Board had 124 pending cases that were more than one year old. By February 22, the number of overage cases had been reduced to 98. In an effort to expedite the processing of cases, the Board instituted a "speed-team" subpanel procedure last year whereby the assigned originating Board Member identifies cases involving straightforward issues which, with the agreement and early involvement of the other two panel members, can be drafted and circulated

promptly without the need for detailed, time-consuming covering memoranda. This expedited procedure is now being used in about 30 percent of our cases and in those cases is reducing the time required to issue decisions by 40 percent.

OUTLOOK FOR FISCAL YEAR 1996

The total Agency case intake is projected to remain level with the intake received in FY 1995. The Agency's FTE total will decrease from an actual level of 2,025 in FY 1995 to a ceiling of 1,950 in FY 1996.

OUTLOOK FOR FISCAL YEAR 1997

A 2 percent increase in case intake is projected for FY 1997. The Agency's FTE will increase from 1,950 to 2,040. The increase represented in the FY 1997 request will allow for an additional 80 FTE in our Regional Offices to handle approximately 40,693 cases expected to be received and to reduce the time involved in conducting a representation elections. The additional funds will also absorb the costs of compensation adjustments and increases in space rent.

CONCLUSION

As our Justification bears out, we continue to consider a variety of reforms which are designed to meet the needs of labor, management and, most important, the public interest. Our innovations have been applauded by labor, management and the academic community and Congress has been advised of this through bodies such as labor law sections of the Massachusetts and New Jersey Bar associations as well as other individual attorneys, practitioners and representatives of both labor and management sides.

We look forward to the challenges that lie ahead, steadfast in our desire to provide the highest level of service to the labor-management community and

the public whom we serve. During a recent commemorative event held by the American Bar Association, representatives of management, in particular, praised the Board's effectiveness in rapidly resolving the vast bulk of the cases that come before it. The process afforded by the NLRB to resolve conflict is an essential contribution to an efficient national economy. It is my judgment that the President's Budget for FY 1997 will support our efforts to redeem the promises contained in our statutory mission.

STATEMENT OF

GENERAL COUNSEL FRED FEINSTEIN
NATIONAL LABOR RELATIONS BOARD

BEFORE THE
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES,
EDUCATION, AND RELATED AGENCIES OF THE HOUSE COMMITTEE ON
APPROPRIATIONS

March 14, 1996

Mr. Chairman and distinguished Members of the Subcommittee:

Thank you for giving us this opportunity to appear before the Subcommittee in support of the Fiscal Year 1997 funding request for the National Labor Relations Board.

The Fiscal Year 1997 budget requests \$181,134,000 for salaries and expenses of the National Labor Relations Board. This request is the product of an analysis of the NLRB's best current estimate of the Agency's caseload during FY 1997; how these cases will be resolved; the number of staff-years of employment (FTE) needed based on targeted rates of productivity; and finally the direct and support costs required to handle the anticipated caseload and to control growing backlogs pursuant to the Agency's Strategic Plan, a copy of which is provided.

The NLRB is an independent agency whose sole function is to enforce the National Labor Relations Act (NLRA). The NLRA is unique in American law because, rather than imposing affirmative obligations on business or defining

benefits for workers, it establishes a process by which employees, should they choose to do so, can organize themselves to affect their working conditions. Thus, the NLRB does not engage in “regulation” in the commonly understood sense of the word. Rather, it facilitates a process by which employers and employees, if they so choose, can work out for themselves the terms and conditions of employment. By enforcing the “ground rules” for workers and management alike, the NLRB provides for the peaceful, orderly resolution of labor disputes. It does this in two ways:

- It conducts elections to determine by majority vote in secret-ballot elections whether employees will be represented for collective-bargaining purposes.
- It investigates charges filed by employees, employers, and unions and, absent settlement, litigates meritorious cases in internal administrative proceedings and before the federal courts, thereby remedying unfair labor practices (ULPs) committed by employers and unions.

Since its inception, the NLRB’s efficient and effective administration of the NLRA has promptly resolved thousands of labor disputes, contributing to the prevention of strife and discord in industry, construction, and services for the benefit of the public and the nation’s economy. During fiscal year 1995, based on preliminary statistics the NLRB obtained offers of reinstatement for more than 4,100 employees - many more did not seek reinstatement - and collected more than \$96 million in backpay. In addition, the amount that the NLRB has saved employers and employees in cost avoidance is immeasurable. Representatives

of management and employees alike have praised the NLRB as a model of workplace dispute resolution.

Under Section 3(d) of the Act, the General Counsel has final authority over the investigation and prosecution of unfair labor practice cases. This authority is exercised primarily by the Agency's Regional Directors and their staffs whom I supervise. Most NLRB casehandling is at the regional office level, where unfair labor practice charges and election petitions are received and processed. Last year, these Regional Offices received approximately 40,000 charges and petitions filed by employers, employees, and unions. Ninety percent of these cases were processed from beginning to end entirely in the field, without any involvement by Washington. Of the more than 30,000 unfair labor practice charges filed, about two-thirds were dismissed in their entirety following initial investigation by Regional Offices. The great majority of these were dismissed within 45 days of being filed. More than half of election petitions led to the holding of secret-ballot elections within 44 days of the filing of the petition.

This is a record and a tradition of efficiency that has served the public well. But that record, reputation, and ability to get the job done are now being tested as never before. Uncertainty over the Agency's funding, as well as interruptions due to the shutdowns, have presented enormous challenges even as we have been taking numerous steps to stay on top of rising backlogs.

The NLRB is required to process all cases filed with the Agency. Although intake declined in the early 1980's, it leveled off thereafter and has grown since then. The net effect of the steady FTE reduction, unaccompanied by a

commensurate decline in case intake, has been that the case handling burden per FTE has risen. The intake per FTE for 1995 was 23.5 percent above the figure for 1985. In addition to an increase in cases per FTE, the cases have grown in complexity in recent years, adding to the workload.

Despite numerous efforts to improve efficiency, which we describe in detail below, backlogs at some stages of the casehandling pipeline have grown in recent years and are now reaching a critical mass that threatens to overwhelm our staff. At the end of December 1995, there were approximately 5,500 unfair labor practice cases pending initial determination—more than double the number two years ago, despite the fact that the number of charges filed has increased only slightly. A case is considered pending initial determination when it is awaiting completion of the initial investigation to determine if the case has merit. At the end of January 1996 - partially because of the shutdown - the number of cases pending initial determination stood at 6,247.

A second Agency measure of backlogs is the time it takes to process a case. A case is considered overage in a Regional Office if more than 45 days have passed without an initial action. At the end of 1995, 24 percent of the charges pending initial investigation were more than 45 days old without an initial decision having been made. This was up from 5 percent in 1988 and 11 percent in 1991.

Additional backlogs appear at more advanced stages of the pipeline. For example, the shortage of trial attorneys in Regional Offices has meant that trial calendars in some Regions have stretched out as much as 11 months. Funding uncertainties in FY 1996 has impeded our ability to move trial work to personnel in less overburdened offices. Similarly, the Board's recent success in reducing

its backlog has led to a bulge of cases at the court enforcement stage. Past staffing reductions in the Enforcement Litigation Division have limited the Agency's capacity to cope with this rush of appellate cases.

Backlogs are not only an internal, operational concern. The costs to employers and employees can be significant. Delayed cases are harder to investigate and, as investigations become more difficult, the costs of legal representation grow. The positions of the parties often harden with the passage of time, making settlement more difficult. Backpay may have built up to a point where it becomes a stumbling block to settlement. Individuals wait longer and longer to have important rights vindicated. Festering workplace disputes are costly to all concerned. The problems caused by the uncertainty of resources in FY 1996 have led both employers and employees to complain about the length of time needed to investigate charges that they had filed or charges that had been filed against them.

Since taking office just over two years ago, I have devoted a major portion of my time to finding ways to improve the Agency's efficiency in all areas within my purview. These efforts have been described in a number of documents - most recently in the Agency's Strategic Plan. However these steps, while critical

to improving our ability to deal with growing backlogs, cannot fully compensate for funding reductions less than the requested FY 1997 appropriation.

Since early 1994, the Office of the General Counsel has taken numerous steps to operate more efficiently, reduce costs and improve its service to the public. These new initiatives have been implemented after careful consultation with Agency management and employee representatives through the partnership council. There also has been consultation with the public served by the Agency through the use of a customer survey, an Advisory Panel and other public outreach.

As outlined in our strategic plan the principal cost reduction initiatives in the Office of the General Counsel include:

- Streamlining the oversight of Regional Offices by reducing the number of districts in the Division of Operations-Management at Headquarters by one-third, reducing the number of managers and increasing the managerial responsibility of each remaining district manager by 50 percent in 1995.
- Transfer of "portable" work such as decision writing and telephonic investigations from a temporarily understaffed or backlogged region to one which can better handle the increased workload or to Headquarters.
- Eliminating administrative clearances and reviews. Delegation of additional casehandling and administrative authority to Regional Offices, eliminating requirements for clearance or approval from Washington.
- Reduction of investigative travel costs by asking parties who file ULP charges (charging parties) and are situated within a 120-mile radius of a field office to

come to that office to provide their evidence; by increased use of affidavits taken by telephone and of questionnaires or requests for statements of facts; by clustering cases so that multiple cases can be handled on a single trip.

- Use of resident agents, working out of their homes in cities where there is no field office but where there is steady casehandling activity. Currently there are two resident agents; we plan to expand the number over the next year.
- Deferral to judicial proceedings of cases involving employer's failure, in violation of Section 8(a)(5), to make contractually required contributions to employee benefit funds, added to our policy of deferring appropriate disputes to the parties' collective-bargaining grievance procedures.
- Streamlining of supervision throughout the Regional Offices and in the Headquarters divisions to reduce layers of review, delegate decisionmaking to the lowest practicable level, utilize supervisory staff flexibly to perform direct casehandling; and increase the ratio of line employees to supervisors.
- Relocation of the Division of Judges from Arlington VA to Washington, DC Headquarters, saving space rent and communication costs.
- Increasing the use of computers and related technology to facilitate casehandling and management. In recent years, the Agency has made

enormous strides in automation of all work processes. Computerized word processing and quantitative analysis have permeated the Agency's culture. The economies achieved to date through the use of electronic mail, increased use of automated legal research data base services, word processing and electronic document sharing have greatly enhanced the efficiency of all employees.

The principal initiatives to improve service to the public by the Regional Offices are:

- Renewed emphasis on the expeditious handling of representation cases ("R cases"), in order to minimize the cost to employers and employees due to lack of resolution of a major workplace issue. Experience has shown that shortening the pendency of R cases also leads to a reduction in ULP allegations that are likely to arise while a question of representation is present.
- More systematic approach to the enforcement of the injunctive provisions of the Act which has led to a more uniformed use of injunctions. There has also been an effort to expedite the litigation of cases where quick relief is especially necessary but where injunction litigation may not be cost-effective. Expediting the timetable produces earlier settlements, which saves resources otherwise expended in trial preparation and litigation.
- Development of an "outcome-oriented" program for managing caseload so that cases receive resources at a time and in an amount appropriate to their level of impact on the public and on the core objectives of the Act. The

program categorizes cases depending on the impact the case will have on the public. For the category with the highest impact we have maintained our historic benchmark for implementation of a Regional determination. For the other two categories we have lengthened our time goals to 11 weeks and 15 weeks from the traditional 45 days for determination of merit. As of January the experimental program has been implemented in 12 Regional Offices. It will be implemented in an additional 11 offices in April and the final 10 Regional Offices by July. This program will enable us to maintain service for the most pressing cases in an environment of scarce resources.

Pursuant to our Strategic Plan we are actively reviewing other steps that might be taken to realize further cost savings. These include:

- Reduction of space Agencywide.
- Reduction of travel expenses.
- Streamlining of Office of Appeals
- Restructuring of compliance program
- Release of underutilized telephone lines.
- Reduction of legal research subscriptions.

In sum, we have taken significant steps to streamline our casehandling administrative and managerial processes. We pledge to continue doing so.

FISCAL YEAR 1997 REQUEST

The President's Fiscal Year 1997 appropriation request for the NLRB is \$181,134,000 which would fund 2,040 FTE. This is a decrease of 14 below our 1995 authorization. At this time we are uncertain as to our 1996 FTE level given the continuing uncertainty of our funding for FY 1996.

The Agency plans to reinvest all present and future cost savings into attacking the backlog and the development and implementation of the automated Case Activity Tracking System. If the Agency were funded at the requested level and all of the projected savings derived from current and planned efforts to save costs were reinvested in direct case handling, the Agency would be able to significantly reduce the backlogs.

Thank you again for this opportunity to testify before the Subcommittee in support funding for the National Labor Relations Board for fiscal year 1997.